

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Docket No. AB-254 (Sub-No. 7X)

PROVIDENCE AND WORCESTER RAILROAD COMPANY—ABANDONMENT
EXEMPTION—IN WORCESTER COUNTY, MA, AND WINDHAM COUNTY, CT

Decided: December 2, 2003

Providence and Worcester Railroad Company (P&W) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a portion of its line of railroad known as the Southbridge Running Track, extending from milepost 0.18, in Webster, MA, to milepost 10.98, in Southbridge, MA, a distance of approximately 10.8 miles, in Worcester County, MA, and Windham County, CT. Notice of the exemption was served and published in the Federal Register on November 4, 2003 (68 FR 62497-98). The exemption is scheduled to become effective on December 4, 2003.

The Board's Section of Environmental Analysis (SEA) served an environmental assessment (EA) in this proceeding on November 7, 2003. In the EA, SEA states that the National Geodetic Survey (NGS) has identified one geodetic station marker that may be affected by the proposed abandonment. According to SEA, P&W does not currently intend to conduct any salvage activities. Nevertheless, SEA recommends that P&W consult with NGS and provide NGS with 90 days' notice before disturbing or destroying any geodetic markers. SEA also states that the Massachusetts Historical Commission and the Connecticut Historical Commission have not completed their review of the potential impact of this project on historic resources. Accordingly, SEA recommends that a condition be imposed requiring P&W to take no steps to alter the historic integrity of the right-of-way until the completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f (NHPA).

Comments to the EA were due by November 21, 2003. No comments were received by the due date. Accordingly, the conditions recommended by SEA in the EA will be imposed.

SEA also indicated in the EA that the right-of-way may be suitable for other public use following abandonment. On November 14, 2003, the Commonwealth of Massachusetts, by and through its Executive Office of Transportation and Construction (EOC), filed a request for issuance of a notice of interim trail use (NITU) for that portion of the right-of-way between milepost 0.18, in Webster, and milepost 1.4 +/-, in Dudley, and between milepost 4.8 +/-, in Dudley, and milepost 10.98, in Southbridge, MA, under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and for a public use condition under 49 U.S.C. 10905, in order to negotiate with P&W for acquisition of the above-described portions of the right-of-way for use as

a recreational trail. EOC requests that P&W be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, except for public use on reasonable terms, and that P&W be barred from removing or destroying any potential trail-related structures, such as bridges, trestles, culverts and tunnels, for a 180-day period from the effective date of the abandonment. EOC states that this time is needed to assemble and review title information, perform appropriate due diligence, and complete negotiations with P&W.

EOC also submitted a statement of willingness to assume financial responsibility for the management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for payment of any and all taxes that may be levied or assessed against, the right-of-way, as required at 49 CFR 1152.29, and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation for rail service. By letter filed on November 21, 2003, P&W indicates that it is willing to negotiate with EOC for interim trail use.

Because EOC's request complies with the requirements of 49 CFR 1152.29 and P&W is willing to negotiate for trail use, a NITU will be issued, as requested. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, P&W may fully abandon the portions of line subject to the NITU, provided the conditions imposed in this decision are met. See 49 CFR 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to restoration for railroad purposes.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). EOC has satisfied these requirements and, therefore, a 180-day public use condition will be imposed commencing with the effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, P&W must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential

purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, P&W is not required to deal exclusively with EOC, but may engage in negotiations with other interested persons.

As conditioned, this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on November 4, 2003, exempting the abandonment of the line described above, is modified to the extent necessary to implement interim trail use/rail banking and to permit public use negotiations as set forth below for the portions of the line between milepost 0.18, in Webster, and milepost 1.4 +/-, in Dudley, and between milepost 4.8 +/-, in Dudley, and milepost 10.98, in Southbridge, for a period of 180 days commencing from the December 4, 2003 effective date of the exemption (until June 1, 2004), and subject to the conditions that P&W shall: (1) consult with NGS and provide NGS with 90 days' notice before disturbing or destroying any geodetic markers; and (2) take no steps to alter the historic integrity of the right-of-way until completion of the section 106 process of the NHPA.
3. Consistent with the public use and interim trail/rail banking conditions imposed in this decision and notice, P&W may discontinue service and salvage track and related materials. For the above-described portions of the line, P&W shall keep intact the right-of-way underlying the tracks, including bridges, trestles, culverts, and tunnels, for a period of 180 days to enable any state or local government agency, or other interested person, to negotiate the acquisition of the described portions of the line for public use. If an interim trail use/rail banking agreement is executed before June 1, 2004, the public use condition will expire to the extent that the trail use/rail banking agreement covers the same line.
4. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume, for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the right-of-way.
5. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the right-of-way.

6. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by the 180th day after service of this decision and notice (by June 1, 2004), interim trail use may be implemented. If no agreement is reached by that time, P&W may fully abandon the portions of the line between milepost 0.18, in Webster, and milepost 1.4 +/-, in Dudley, and between milepost 4.8 +/-, in Dudley, and milepost 10.98, in Southbridge, provided the conditions imposed in this proceeding are met.

8. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary